IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 32935 of 2006(U)

PETITIONER:

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1. SABU JOSEPH,
   S/O.K.P.JOSEPH (LATE), PULIYILATHU HOUSE,
   THACHAMPARA, THACHAMPARA P.O.,
   PALAKKAD DISTRICT.

2. BETTY SABU,
   W/O.SABU JOSEPH,
   DO. DO.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED
   BY THE SECRETARY TO GOVERNMENT
   REVENUE (SPECIAL CELL) DEPARTMENT,
   THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
   PALAKKAD.

3. THE REVENUE DIVISIONAL OFFICER,
   OTTAPPALAM, PALAKKAD DISTRICT.

4. THE TAHSILDAR,
   MANNARKKAD, PALAKKAD DISTRICT.

5. THACHAMPARA GRAMA PANCHAYATH,
   THACHAMPARA P.O., PALAKKAD DISTRICT,
   REPRESENTED BY THE SECRETARY.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 32935/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE DEED NO. 1986/1975 OF SUB REGISTRY OFFICE, MANNARKKAD.

P2 : COPY OF THE DEED NO. 6055/1996 ON THE FILE OF MANNARKKAD SUB REGISTRY OFFICE.

P3 : COPY OF THE DEED NO. 4468/1998 ON THE FILE OF SUB REGISTRY OFFICE, MANNARKKAD.

P4 : COPY OF THE RECEIPT OF BUILDING TAX ISSUED BY THE 5TH RESPONDENT.

P5 : COPY OF THE AUTHORIZATION LETTER DATED 20/11/1998 AUTHORISING H.D.F.C. BY THE PETITIONER NO.1.

P6 : COPY OF THE CERTIFICATE ISSUED BY HDFC ON 14/02/2006.

P7 : COPY OF CERTIFICATE ISSUED BY HDFC ON 15/07/2004.

P8 : COPY OF COMPLETION CERTIFICATE ISSUED by the WORK CONTRACTOR DATED 10/12/1998.

P9 : COPY OF THE ORDER DATED 30/09/2002 PASSED BY THE RESPONDENT NO. 4.

P10 : COPY OF THE ORDER DATED 22/03/2003 PASSED IN K.DIS.NOS.3434/02/F PASSED BY THE RESPONDENT NO. 3.

P11 : COPY OF THE ORDER DATED 23/02/2004 PASSED IN K.DIS.NO.40031/2003/B1.

P12 : COPY OF THE ORDER DATED 23/01/2006 PASSED BY THE RESPONDENT NO.4.

P13 : COPY OF THE REPRESENTATION DATED 18/02/2006 SUBMITTED BY THE PETITIONERS.

P14 : COPY OF THE ORDER DATED 05/10/2006 PASSED BY THE 1ST RESPONDENT.

P15 : COPY OF THE CERTIFICATE ISSUED BY THE 5TH RESPONDENT ON 01/11/2006.

P16 : COPY OF THE ASSESSMENT REGISTER IN RESPECT OF THE BUILDING MAINTAINED by the 5TH RESPONDENT FOR THE PERIOD 1997-98 TO 2001-02.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 32935 of 2006

Dated, this the 13th day of September, 2007

J U D G M E N T

Petitioners are challenging demand of luxury tax in respect of their residential building. Heard learned counsel for petitioners and learned Government Pleader for respondents. Petitioners' case is that the building is very old and was constructed 40 years back. Petitioners have done only repair and renovation of the same by availing a loan from HDFC Bank. The repair or modification carried out on the building should not be treated as completion of construction for the purpose of assessment of luxury tax is the main contention advanced by learned counsel for the petitioners. He has further contended that the repairs were carried out prior to 01/04/1999 and therefore luxury tax under Section 5A of the Act is not attracted.

2. The learned Government Pleader on the other hand contended that on inspection, the Tahsildar found that the building is not the old one but completely renovated one, with roof, floor etc. changed. Therefore, according to him, the building is a new construction, the construction of which was completed according to

the admission of the petitioner, in July 2001. Assessment is based on enquiry and on petitioners' admission and in fact petitioners have paid the building tax without dispute, is what is stated by the learned Government Pleader.

3. The building purchased by the petitioners was an old one as is evident from the order itself and it was subjected to major repair and improvement is also admitted by the petitioners. The petitioners have remitted building tax also without dispute. Section 5(3) of the Act says that if plinth area of the building, construction of which is completed before the appointed day, is increased, only the additional plinth area could be assessed to building tax. However, it is provided under Section 5(4) of the Act that if plinth area of the building, construction of which is completed after the appointed day, is increased, then the entire plinth area has to be assessed to building tax and the building is entitled to rebate of tax earlier paid. In this case Section 5(4) of the Act is not applicable because the building, which was subjected to major repair and improvement, was constructed before the appointed day. Even though learned Government Pleader stated that the changes brought out to the building makes it a new one, I do not think the

Tahsildar himself has established the same in the assessment proceedings. On the other hand, finding is that petitioners have renovated the building as a modern one. Section 5A of the Act only says that if the plinth area of a building, the construction of which is completed after 01/04/1999, is 278.7 sq. meter or more, such building, if residential, will attract luxury tax. However, Section 5A does not specifically provide for luxury tax on major improvement or repair leading to increase in plinth area. Therefore, the question is whether luxury tax is attracted to a building after major repairs and improvements. Even though Section 5A is an independent charged section, it is to be read along with other provisions of the Act that provides for revision of assessment or fresh assessment on repair or maintenance of building leading to extension of plinth area. Petitioners have a case that the plinth area of the original building was only reduced by them and the repair and renovation done by the petitioners did not lead to any addition to the plinth area. This is not an issue considered or decided by the Assessing Authority, namely the Tahsildar. If the plinth area of an old building is increased in the course of renovation, it will answer the definition of major repair or improvement in terms of Section 2(h) of the Act.

No doubt luxury tax will be attracted if major repairs or improvement is completed on or after 01/04/1999 leading to extension of plinth area, whereby the plinth area of the building reaches or exceeds 278.7 sq. meters. Since there is nothing on record to indicate the plinth area of old building, which was renovated by petitioners, I dispose of the writ petition directing the Tahsildar to permit the petitioners to adduce evidence regarding plinth area of the old building, and conduct enquiry by himself and decide the issue. If plinth area was increased in the course of repair or maintenance by the petitioners, which is completed in 2001, petitioners will be liable for luxury tax or otherwise petitioners cannot be subjected to levy of luxury tax. Tahsildar will decide the matter afresh within a period of two months from the date of production of a copy of judgment.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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